IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 90 OF 2004

Ms. Barbara Gomes, c/o
Rosa Esmenia Morais,
H. No.23/31, Pale, Velsao,
Salcete, Goa. ... Petitioner

Versus

1. Mr. Pratap Mardolkar,
H.No.84, Alto Dabolim,
Goa, and

2. Comunidade of Sancoale,
through the Procurador of
the Managing Committee of
the Comunidade of Sancoale,
Sancoale, Goa. ... Respondents.

Shri V. B. Nadkarni, Senior Advocate with Shri J. Cardozo, advocate for the petitioner.

Shri G. Vijaychandran, advocate for respondent no.1.

CORAM : D. G. KARNIK, J.

DATE : 2nd April, 2004

ORAL ORDER

Heard learned counsel for the petitioner and respondent no.1.

2. By this Writ Petition the petitioner challenges the Judgment and Order dated 18th October, 2003, passed by the learned District Judge, South Goa at Margao, granting leave to the respondents to appeal. The learned District Judge has referred to and relied upon the observations made in paragraph 84 of the judgment of the Apex Court in **State of Punjab (now Haryana) and Ors. vs. Amar Singh & Anr.,** reported in AIR 1974 SC 994, wherein it was observed that

even a person who is not a party to a decree or order may, with the leave of the Court, prefer an appeal from such decree or order, if he is either bound by the Order, or is aggrieved by it, or is prejudicially affected by it.

3. Shri Nadkarni, learned Senior Counsel for the petitioner, however, submits that the observations made in paragraph 84 of the judgment relied upon by the learned District Judge are the observations in the minority judgment and the majority view is to the contrary. He invites my attention to paragraph 29 of the majority judgment, wherein it is observed thus:-

> "The ordinary rule is that only a party to a suit adversely affected by the decree or any of his representatives-in-interest may file an appeal. Under such circumstances, a person who is not a party may prefer an appeal with the leave of the appellate court 'if he would be prejudicially affected by the judgment and if it would be binding on him as res judicata under Explanation 6 to Section 11."

The majority judgment also holds that a person who is not a party to the suit or proceedings can file an appeal if he is prejudicially affected by the judgment and if it would be binding on him as res judicata. In paragraph 7 of the impugned order, the learned District Judge has held that the respondents were aggrieved persons with regard to the judgment and decree passed by the trial Court, since they were directly connected with the Comunidade, being

shareholders and they were likely to suffer pecuniary loss in the form of the dividend with regard to the income of the suit property. Thus, the condition of being aggrieved by the judgment of the trial Court was satisfied.

4. Learned counsel for the respondents invited my attention to the judgment of this Court in **Mr. Apolinario C. Fernandes & 2 Ors. vs. Mr. Victor Jose P. D'Souza & 5 Ors.,** reported in 1990 (1) Goa L.T. 91. In paragraph 11 of the said Judgment this Court has held Clause (8) of Article 26 of the Code of Comunidade has to be given a liberal interpretation so as to bring within its sweep the power to approach the court of law to safeguard the interests of the Comunidade when the Comunidade itself choses not to act.

5. Taking an overall view of the matter, I do not find it proper to interfere in the discretion exercised by the learned District Judge in granting leave to appeal. The petitioner would be entitled to defend the appeal on all matters open to her in law and no prejudice would be caused to her.

6. In the circumstances, the Writ Petition is rejected summarily. Interim orders stand vacated.

D. G. KARNIK, J.